



BILLING CODE – 4510-FP-P

DEPARTMENT OF LABOR

Employment and Training Administration

Comment Request for Information Collection for Form ETA-9142-B-CAA-2

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: **60-day Notice.** Comment Request for Information Collection for Form ETA-9142-B-CAA-2, *Attestation for Employers Seeking to Employ H-2B Nonimmigrant Workers Under Section 205 of Division M of the Consolidated Appropriations Act, 2018 Public Law 115-141* (March 23, 2018) (OMB Control Number 1205-0531), Revision of Currently Approved Collection.

SUMMARY: The Department of Labor (DOL or Department), as part of its effort to streamline information collection, clarify statutory and regulatory requirements, and provide greater transparency and oversight in the H-2B nonimmigrant visa application processes, conducts a preclearance consultation program to provide the public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA). This program helps ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, ETA is soliciting comments concerning the revision of the Office of

Management and Budget (OMB) Control Number 1205-0531, containing Form ETA-9142-B-CAA-2, *Attestation for Employers Seeking to Employ H-2B Nonimmigrant Workers Under Section 205 of Division M of the Consolidated Appropriations Act, 2018 Public Law 115-141 (March 23, 2018)*, which expires November 30, 2018. A copy of the proposed information collection request can be obtained by contacting the office listed below in the “Addresses” section of this notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Written comments may be submitted by the following methods:

- *Email (encouraged):* ETA.OFLC.Forms@dol.gov.
- *Mail:* William W. Thompson II, Administrator, Office of Foreign Labor Certification, Box PPII 12-200, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, D.C. 20210.
- *Fax:* 202-513-7395.

INSTRUCTIONS: Comments which are related to specific forms should identify that form or form instruction using the form number, e.g., Form 9142-B-CAA-2, and should identify the particular requirement to which the comment relates. A copy of the proposed information collection request (ICR) can be obtained by contacting the Office of Foreign Labor Certification as listed above. For this information collection, the Department is solely seeking comments in connection with the record keeping requirement and the associated burden. The Department does not does not seek comment on the Form 9142-

B-CAA-2 itself because the form is no longer in use.

FOR FURTHER INFORMATION CONTACT: William W. Thompson II, Administrator, Office of Foreign Labor Certification, 202-513-7350 (this is not a toll-free number), or for individuals with hearing or speech impairments, 1-877-889-5627 (this is the TTY toll-free Federal Information Relay Service number), Box PPII 12-200, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, D.C. 20210.

SUPPLEMENTARY INFORMATION:

I. Background

The H-2B visa program enables employers to bring nonimmigrant foreign workers to the U.S. to perform nonagricultural work of a temporary or seasonal nature as defined in 8 U.S.C. § 1101(a)(15)(H)(ii)(b). For purposes of the H-2B program, the Immigration and Nationality Act and governing federal regulations require the Secretary of Labor to certify, among other things, that any foreign worker seeking to enter the United States on a temporary basis for the purpose of performing non-agricultural services or labor will not, by doing so, adversely affect wages and working conditions of U.S. workers who are similarly employed. In addition, the Secretary of Labor must certify that qualified U.S. workers are not available to perform such temporary labor or services.

Section 205 of Division M of the Consolidated Appropriations Act, 2018 (2018 Act), authorized the Secretary of the Department Homeland Security (DHS), in consultation with the Secretary of Labor, to increase the number of H-2B visas available to U.S. employers in Fiscal Year (FY) 2018, notwithstanding the otherwise established statutory

numerical limitation. In consultation with the Secretary of Labor, the Secretary of Homeland Security increased the H-2B cap for FY 2018 by up to 15,000 additional visas for American businesses that were likely to suffer irreparable harm (that is, permanent and severe financial loss) without the ability to employ all of the H-2B workers requested on their petition before the end of FY 2018. As set forth in the Temporary Rule: *Exercise of Time-Limited Authority to Increase the Fiscal Year 2018 Numerical Limitation for the H-2B Temporary Nonagricultural Worker Program*, 83 FR 24905 (May 31, 2018), which implemented the 2018 Act, employers seeking authorization to employ workers under this time-limited authority were required to complete and submit Form ETA-9142-B-CAA-2, *Attestation for Employers Seeking to Employ H-2B Nonimmigrant Workers Under Section 205 of Division M of the Consolidated Appropriations Act, 2018*, Public Law 115-141 (March 23, 2018).

This collection of information is required by the regulations that went into effect on May 31, 2018. Initial clearance for this information collection was sought using PRA emergency procedures outlined in regulations at 5 CFR 1320.13. The exigency created by the 2018 Act and the short period of time remaining in the fiscal year for U.S. employers to receive additional visas as authorized under the 2018 Act required initial clearance using expedited processes. As a result, the Department now seeks public comment to revise this information collection, through the notice and comment process, in compliance with PRA laws and regulations.

Because the expanded visa cap under the 2018 Act has been met, employers are no longer permitted to submit Form ETA-9142-B-CAA-2. However, employers must

continue to retain the form and required supporting documentation for three (3) years from the date of certification for each H-2B application for which an employer submitted Form ETA-9142-B-CAA-2 to DHS. As a result, the Department seeks public comment to revise the information collection as a result of continued record retention requirements now that Form ETA-9142-B-CAA-2 is no longer in use. The Department proposes to eliminate the burden associated with the preparation and submission of the form, including the requirements of assessing irreparable harm and conducting additional requirement, because the form is no longer required or accepted in connection with petitions for H-2B workers.

II. Review Focus

DOL is particularly interested in comments that:

- evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; and also the agency's estimates associated with the annual burden cost incurred by respondents and the government cost associated with this collection of information;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g.,

permitting electronic submissions of responses.

For complete details regarding the proposed revisions to this ICR, contact the office listed in the **FOR FURTHER INFORMATION CONTACT** section above.

III. Current Actions:

This revision request will allow ETA to meet its statutory responsibilities under the 2018 Act related to the H-2B nonimmigrant temporary non-agricultural employment-based visa program.

This information collection is subject to the PRA. A federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by OMB under the PRA and displays a currently valid OMB control number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid control number. *See* 5 CFR 1320.5(a) and 1320.6. The Department obtains OMB approval for this information collection under control number 1205-0531.

Title of the Collection: Attestation for Employers Seeking to Employ H-2B Nonimmigrant Workers Under Section 205 of Division M of the Consolidated Appropriations Act, 2018 Public Law 115-141 (March 23, 2018).

Type of Review: Revision of a Currently Approved Information Collection.

Form: Form ETA-9142-B-CAA-2

OMB Number: 1205-0531

Affected Public: Private Sector (businesses or other for-profits and not-for-profit

institutions) and State, Local, and Tribal Governments.

Total Estimated Annual Respondents: 5,177

Annual Frequency: On occasion

Total Estimated Annual Responses: 5,177

Total Estimated Average Time per Response: 1 hours

Total Estimated Annual Burden Hours: 5,177 hours

Total Estimated Annual Cost for Respondents: \$0

Comments submitted in response to this comment request will be summarized and/or included in the request for OMB approval of the ICR; they will also become a matter of public record. Commenters are encouraged not to submit sensitive information (e.g., confidential business information or personally identifiable information such as a social security number).

Rosemary Lahasky,
Deputy Assistant Secretary for Employment and Training, Labor.

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